BOOK REVIEWS.

THE RULE-MAKING AUTHORITY IN THE ENGLISH SUPREME COURT. By Samuel Rosenbaum. Pp. xiv, 321. Boston: The Boston Book Co., 1917.

Liberal samples of Mr. Rosenbaum's studies of English civil procedure have already been presented to readers of the LAW REVIEW. Three chapters of this compilation were originally published in English legal journals. The title chosen for the compilation does not fully reveal the inclusive nature of the work which traces the result of judicial rule-making thoroughly and critically through what has been the most fruitful and triumphant period of British judicial administration.

The preface, written by T. Willes Chitty, master and editor of the Yearly Practice, shows the exceptional facilities which the author enjoyed. No English lawyer had ever attempted to sum up and estimate the period following the adoption of the Judicature Acts of 1873 and 1875. While this situation implied pioneer research, it was offset by the willing assistance afforded by eminent authorities, men whose experience spans all or nearly all of this remarkable period. The result is one of those rare accomplishments of an alien scholar in an exceedingly technical field.

From the standpoint of American needs no native could have handled the subject so well; he probably would not have conceived it as one primarily relating to judicial responsibility. More readily than English lawyers we can understand that the relationship between court-made rules and judicial efficiency is one of cause and effect, for we have little of either in our typical state system.

Of course it will not do to overlook the unification of English courts under the Judicature Acts as a prerequisite for the exercise of the rule-making power—and this is set forth in an early chapter of the book—but the outstanding difference between our system and that prevailing in Great Britain and the numerous associated commonwealths is that we still adhere for the most part to statutory procedure, while they look to the courts for rational evolution in the machinery of justice. The difference is the difference between inexpertness and expertness in rule drafting, between irresponsibility and responsibility in the administration of justice. While we still squander energy in litigating unessentials of procedure, in British courts around the world litigation is practically confined to substantial issues.

By the year 1887 reform in English courts had reached a state to justify the estimate of Lord Bowen, who said: "It may be said without fear of contradiction that it is not possible in the year 1887 for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation . . . law has ceased to be a scientific game that may be won or lost by playing some particular move." (P. 270.)

In justice to Mr. Rosenbaum it must be said that he assumes no thesis. His study is in the scientific spirit and the missteps taken at times and the omissions still remaining are set down frankly. The author's literary skill is such as to make fairly entertaining a study which would seem necessarily

prosaic, while his account is so faithful and complete that no American lawyer, seeking to understand the English system, can do without this book. Only by tracing the subject historically and critically can one understand such a thing as the early willingness to dispense with pleadings in certain causes and the success of efforts in this direction.

The actual constitution of the rule-making authority is a matter of the greatest present interest to progressive lawyers in a number of states. Chapter XVI, entitled *Rule-Making in the Courts of the Empire,* is especially informative. Here is related briefly the operation of the principle in Scotland, Ireland, the Canadian provinces, Australia, New Zealand, South Africa, India, and the island possessions of the Pacific and the Caribbean. Various experiments have been made in respect to the make-up of the rules committee. There is still agitation on this point at home. Success has undoubtedly attended the coupling of the bar with the bench. In all these experiments there are lessons for American lawyers now approaching a new era which promises ultimate success, but undoubtedly has its own special risks. Emphasis falls upon organized responsibility. Our decentralized judicial systems cannot easily assume this new and necessary function of regulating procedure. While we cannot imitate the forms worked out in British jurisdictions we can accept the principles involved and work them out in practical fashion.

The thoroughness of the author's work is evidenced by the fullness of citations backed up by tables of cases, statutes, and books to which reference is made. The style of composition is admirable, but upon this readers of the LAW REVIEW have had opportunity already to bestow appreciation.

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Chicago.

A TREATISE ON THE RESCISSION OF CONTRACTS AND CANCELLATION OF WRITTEN INSTRUMENTS. By Henry Campbell Black. Vol. I, Pp. xxvi, 837. Vol. II, Pp. xiv, 837 to 1779. Kansas City, Mo.: Vernon Law Book Co., 1916.

To the practicing lawyer Mr. Black's publication will prove valuable in several ways. It is a very complete index-digest of the law of Rescission and Cancellation, and it deals sufficiently with general principles to enable the mere plodder along the dusty highway to scent broad fields of legal speculation and theory which lie beyond the boundary lines of precedent and judicial decision. The subject has not heretofore been separately treated, and as it forms a very important part of the private law and is the basis of much litigation, Mr. Black's volume cannot fail to prove useful to the bar.

With this acknowledgment of its unquestionable value to the working lawyer is coupled an expression of regret that it is not the text-book that the student needs or is awaiting. Unfortunately, text-writers, like our author, assume the yoke of the law that is imposed by the courts and give us a restatement of judicial decision and reasoning instead of a treatment of the subject matter from the point of view of the investigator and scholar who, like Professor Wigmore in his monumental work on Evidence, seeks everywhere for light which may bring out the principle which is the ultimate